

Message Text

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SUBJECT: AMBASSADOR RICHARDSON'S OCTOBER 4 TESTIMONY ON
DEEP SEABED MINING LEGISLATION

1. ON OCTOBER 4, AMBASSADOR RICHARDSON TESTIFIED BEFORE THE
SENATE COMMERCE AND ENERGY COMMITTEES ON TWO DEEP SEABED
MINING BILLS TABLED BY SENATORS METCALF AND WEICKER. THE
PRINCIPAL DEPARTURE FROM PREVIOUS TESTIMONY ON THIS SUBJECT
IS AMBASSADOR RICHARDSON'S STATEMENT OF ADMINISTRATION SUP-
PORT FOR SUCH LEGISLATION. (UNTIL NOW, ADMINISTRATION
POLICY HAS BEEN NOT RPT NOT TO SUPPORT DEEP SEABED MINING
LEGISLATION IN PRINCIPLE.) THE RELEVANT PORTION OF AMBAS-
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SADOR RICHARDSON'S TESTIMONY READS AS FOLLOWS: QTE: AS TO
TIMING, THE ADMINISTRATION BELIEVES THAT IF THERE IS TO BE
ANY MEANING TO THE COMMON HERITAGE OF MANKIND, THOSE WITH
THE TECHNOLOGY AND RESOURCES TO MAKE IT A REALITY MUST MOVE
FORWARD. IN OUR VIEW, THEREFORE, CONGRESS SHOULD CONTINUE
TO MOVE FORWARD WITH LEGISLATION. FOR ITS PART, THE ADMINI-
STRATION WILL WISH TO WORK CLOSELY WITH THIS COMMITTEE AND
OTHER CONCERNED COMMITTEES TO MAKE THE SUBSTANCE OF THE
LEGISLATION CONSISTENT WITH OUR INTERNATIONAL POSTURE. UNQTE.

2. POSTS MAY MAKE WHATEVER USE OF

TESTIMONY THEY SEE FIT IN DISCUSSION OF LOS MATTERS WITH HOST GOVERNMENTS. POSTS IN COUNTRIES THAT ARE POTENTIAL SEABED MINERS ARE REQUESTED TO PROVIDE COPIES TO HOST GOVERNMENTS AND REPORT REACTIONS WHEN RECEIVED. REACTIONS FROM OTHER POSTS WOULD BE WELCOMED.

3. FULL TEXT FOLLOWS (TYPED COPIES ALSO BEING SENT BY POUCH): QTE. TESTIMONY OF AMBASSADOR RICHARDSON BEFORE THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION AND THE SUBCOMMITTEE ON PUBLIC LANDS AND RESOURCES OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES TUESDAY, OCTOBER 4, 1977

MR. CHAIRMAN: I AM PLEASED TO HAVE THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO DISCUSS THE RESULTS OF THE SIXTH SESSION OF THE THIRD U.N. CONFERENCE ON THE LAW OF THE SEA AND TO PRESENT OUR VIEWS ON THE DEEP SEABED MINING LEGISLATION BEFORE YOUR COMMITTEES.

AS YOU ARE AWARE, THE LAST SESSION PRODUCED MIXED RESULTS. WHILE PROGRESS WAS MADE IN A NUMBER OF AREAS, THE PROPOSED UNCLASSIFIED

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ARTICLES ON DEEP SEABED MINING IN THE INFORMAL COMPOSITE NEGOTIATING TEXT--THE ICNT--WHICH RESULTED FROM THE SESSION WERE FUNDAMENTALLY UNACCEPTABLE TO THE UNITED STATES. THE FAILURE OF THIS MEETING OF THE CONFERENCE TO PRODUCE A TEXT WHICH COULD SERVE AS A BASIS FOR NEGOTIATION ON DEEP SEABEDS HAS A DIRECT BEARING ON WHAT I WISH TO DISCUSS WITH YOU TODAY -- LEGISLATION TO REGULATE DEEP SEABED MINING BY U.S. CITIZENS, IN PARTICULAR THE BILLS WHICH ARE PRESENTLY BEFORE YOU.

MY TESTIMONY WILL BEGIN FIRST WITH THE CONFERENCE ITSELF, THEN DESCRIBE OUR REVIEW, AND FINALLY DISCUSS THE NEED FOR AND SUBSTANCE OF DEEP SEABED MINING LEGISLATION.

LAW OF THE SEA CONFERENCE

THE SIXTH SESSION OF THE UN LAW OF THE SEA CONFERENCE WAS HELD IN NEW YORK FROM MAY 23 TO JULY 15. THE FIRST THREE WEEKS OF FORMAL WORK WERE DEVOTED EXCLUSIVELY TO DEEP SEABED ISSUES. AT THE REQUEST OF A LARGE NUMBER OF DELEGATIONS, OURS INCLUDED, THE DAILY INFORMAL TALKS WERE HELD UNDER THE CHAIRMANSHIP OF MINISTER JENS EVENSEN OF NORWAY WHO ACTED AS THE WORKING GROUP LEADER FOR FIRST COMMITTEE CHAIRMAN, PAUL ENGO OF THE CAMEROON. EVENSEN'S SELECTION WAS AN OUTGROWTH OF HIS PREVIOUSLY SUCCESSFUL EFFORTS TO FACILITATE COMPROMISES IN OTHER CONFERENCE COMMITTEES, PARTICULARLY IN THE SECOND COMMITTEE DEALING WITH FISHERIES

AND NAVIGATION, AS WELL AS HIS USEFUL EFFORTS ON SEABEDS AT INTERSESSIONAL MEETINGS IN FEBRUARY-MARCH. A DIFFICULT BUT NONETHELESS GOOD START WAS MADE DURING THE FIRST TWENTY-ONE DAYS IN MOVING THE DEEP SEABED NEGOTIATIONS AWAY FROM THE DEADLOCK THAT WAS CHARACTERISTIC OF THE FIFTH SESSION IN THE FALL OF 1976. AS A RESULT OF THIS EFFORT AND FOLLOWING ON FROM IT, EVENSEN PRODUCED A NUMBER OF COMPROMISE TEXTS ON THE CRITICAL ELEMENTS OF A DEEP SEABEDS REGIME. THESE EVENSEN PROPOSALS WERE BY NO UNCLASSIFIED

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MEANS ACCEPTABLE FROM OUR STANDPOINT, BUT THE RESULTING TEXTS DID REPRESENT THE PRODUCT OF AN OPEN DISCUSSION INVOLVING ALL OF THE COUNTRIES REPRESENTED AT THE CONFERENCE. THE EVENSEN TEXTS COULD HAVE BEEN A BASIS FOR FURTHER NEGOTIATION BREAKING THE IMPASSE ON SEABED MINING.

UNFORTUNATELY, HOWEVER, THESE TEXTS -- THE PRODUCT OF WEEKS OF HARD WORK -- WERE SUBSTANTIALLY AMENDED AT THE LAST MOMENT BY CHAIRMAN ENGO, WHO FORWARDED TO THE CONFERENCE PRESIDENT A FIRST COMMITTEE TEXT THAT TOTALLY FAILS TO ACCOMMODATE THE INTERESTS OF THE UNITED STATES. THIS TEXT WAS PRODUCED IN PRIVATE, NEVER DISCUSSED WITH A REPRESENTATIVE GROUP OF CONCERNED NATIONS -- TREATING WEEKS OF SERIOUS DEBATE AND RESPONSIBLE NEGOTIATION AS ESSENTIALLY IRRELEVANT.

MR. CHAIRMAN, THOSE WHO HAVE FOLLOWED THE LAW OF THE SEA CONFERENCE SINCE ITS CARACAS SESSION IN 1974 ARE WELL AWARE THAT THE TEXTS ON DEEP SEABED MINING WHICH HAVE BEEN PRODUCED AT SUCCEEDING SESSIONS HAVE BEEN EITHER PRAISED OR CRITICIZED IN WHAT SEEMS TO BE A FLIP-FLOP PATTERN. THE SINGLE NEGOTIATING TEXT (SNT) PRODUCED IN GENEVA IN 1975 QTE FAVORED UNQTE THE DEVELOPING COUNTRIES; THE REVISED SINGLE NEGOTIATING TEXT (RSNT) FROM NEW YORK IN 1976 WAS ASSERTED TO HAVE QTE FAVORED UNQTE THE DEVELOPED STATES. AND NOW WE HAVE THE ICNT, AGAIN QTE FAVORING UNQTE THE DEVELOPING COUNTRIES. THIS CONFERENCE PATTERN HAS HARDLY BEEN CONDUCIVE TO DEVELOPMENT OF AGREEMENT ON A COMPROMISE APPROACH ACCOMMODATING THE MANY DIFFERENT NATIONAL INTERESTS INVOLVED.

AS I NOTED ON JULY 20, AMONG THE SERIOUS POINTS OF SUBSTANTIVE DIFFICULTY IN THE LATEST DEEP SEABEDS TEXT AND THE UNCLASSIFIED

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SYSTEM IT WOULD DEFINE ARE THE FOLLOWING:

-- IT WOULD NOT GIVE THE ASSURED ACCESS UNDER REASONABLE CONDITIONS THAT IS NECESSARY IF WE AND OTHERS COULD BE EX-

PECTED TO HELP FINANCE THE ENTERPRISE AND TO ACCEPT A QTE
PARALLEL SYSTEM UNQTE AS A BASIS OF COMPROMISE.

-- IT COULD BE READ TO MAKE TECHNOLOGY TRANSFER BY CONTRAC-
TORS A CONDITION OF ACCESS TO THE DEEP SEABED -- SUBJECT,

AT LEAST IN PART, TO NEGOTIATION IN THE PURSUIT OF A CON-
TRACT.

-- IT COULD BE READ TO GIVE THE SEABED AUTHORITY THE POWER
EFFECTIVELY TO MANDATE JOINT VENTURES WITH THE AUTHORITY
AS A CONDITION FOR ACCESS.

-- IT FAILS TO SET CLEAR AND REASONABLE LIMITS ON THE FIN-
ANCIAL BURDENS TO BE BORNE BY CONTRACTORS, THUS THROWING
UP AN OBSTACLE PERHAPS SUFFICIENT TO STIFLE SEABED DEVELOP-
MENT.

-- IT WOULD SET AN ARTIFICIAL LIMIT ON SEABED PRODUCTION
OF MINERALS FROM NODULES, WHICH IS NOT ONLY OBJECTIONABLE
IN PRINCIPLE BUT ALSO FAR MORE STRINGENT THAN WOULD BE
NECESSARY TO PROTECT LAND-BASED PRODUCERS FROM POSSIBLE
ADVERSE EFFECTS.

-- IT WOULD GIVE THE SEABED AUTHORITY EXTREMELY BROAD,
OPEN-ENDED POWER TO REGULATE ALL OTHER MINERAL PRODUCTION
FROM THE SEABED QTE AS APPROPRIATE. UNQTE.

-- IT COULD BE READ AS GIVING THE AUTHORITY UNACCEPTABLE
NEW POWER TO REGULATE SCIENTIFIC RESEARCH IN THE AREA.

-- IT WOULD FAIL ADEQUATELY TO PROTECT MINORITY INTERESTS
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IN ITS SYSTEM OF GOVERNANCE AND WOULD, ACCORDINGLY,
THREATEN TO ALLOW THE ABUSE OF POWER BY AN ANOMALOUS QTE
MAJORITY. UNQTE.

-- IT WOULD ALLOW THE DISTRIBUTION OF BENEFITS FROM SEABED
EXPLOITATION TO PEOPLES AND COUNTRIES NOT PARTIES TO THE
CONVENTION.

-- IT WOULD SERIOUSLY PREJUDICE THE LIKELY LONG-TERM
CHARACTER OF THE INTERNATIONAL REGIME, BY REQUIRING THAT
-- IF AGREEMENT TO THE CONTRARY IS NOT REACHED WITHIN 25
YEARS -- THE REGIME AUTOMATICALLY BE CONVERTED INTO A QTE
UNITARY UNQTE SYSTEM, RULING OUT DIRECT ACCESS BY CONTRAC-
TORS, EXCEPT TO THE EXTENT THAT THE AUTHORITY MIGHT SEEK
THEIR PARTICIPATION IN JOINT VENTURES WITH IT.

MR. CHAIRMAN, THESE ARE SERIOUS DEFICIENCIES. WHAT IS IN-
VOLVED HERE IS THE ESTABLISHMENT OF A REGIME FOR HALF

THE EARTH'S SURFACE. WHILE TODAY'S TECHNOLOGY POINTS ONLY TO MANGANESE NODULES, THERE IS NO TELLING WHAT LIES AHEAD IN THE FUTURE. WE SIMPLY CANNOT AGREE TO A REGIME WHICH WOULD UNNECESSARILY INHIBIT, AND PERHAPS EVEN PREVENT, DEEP SEABED DEVELOPMENT. TO DO SO WOULD MAKE A MOCKERY OF THE COMMON HERITAGE OF MANKIND AND REDUCE TO A PITIFUL TRICKLE THE BENEFITS THAT COULD OTHERWISE ACCRUE--NOT ONLY TO THE ENTREPRENEURS WHO WILL RISK THEIR CAPITAL, BUT ALSO TO MANKIND AS A WHOLE, IN PARTICULAR THE DEVELOPING COUNTRIES.

THE DEVELOPING COUNTRIES TELL US THEY WISH A NEW INTERNATIONAL ECONOMIC ORDER IN WHICH THEY MIGHT PARTICIPATE AS EQUAL PARTNERS. BUT WHAT GOOD IS AN ORDER FOR HALF THE EARTH'S SURFACE THAT WON'T WORK? NO ONE CAN FORCE THE UNCLASSIFIED

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INVESTMENT OF CAPITAL AND TECHNOLOGY. IT MUST BE INDUCED TO FLOW. WE THUS HAVE A MAJOR INTEREST, IN ADDITION TO THE RESOURCES, IN THE INTERNATIONAL INSTITUTION WE CREATE FOR THE DEEP SEABED. WE SEEK AN INSTITUTION WHICH WILL REPRESENT A TRUE ACCOMMODATION OF THE INTERESTS OF BOTH DEVELOPING AND DEVELOPED COUNTRIES--A PRECEDENT FOR THE FUTURE. WHAT HAPPENED AT THE SIXTH SESSION IS THEREFORE PARTICULARLY DISAPPOINTING. WE WERE PREPARED TO AGREE TO A COMPROMISE WHICH WOULD PRODUCE MAXIMUM BENEFITS TO BE SHARED WITH THE POORER COUNTRIES WHILE AT THE SAME TIME OPENING UP THE OPPORTUNITY FOR THE DEVELOPING WORLD ITSELF TO PARTICIPATE IN THE EFFORT. SUCH A COMPROMISE WOULD BE A MAJOR ACHIEVEMENT--NOT ONLY FOR THE BENEFITS TO BE ATTAINED FROM RESOURCE EXPLOITATION AS SUCH, BUT ALSO AS A PRECEDENT FOR FUTURE WORLD INSTITUTIONS.

BEFORE I CLOSE MY DISCUSSION OF THE CONFERENCE, I BELIEVE IT IS IMPORTANT TO NOTE IN SOME DETAIL THE ACCOMPLISHMENTS AND OTHER DEVELOPMENTS AT THE LAST SESSION. THE ICNT REFLECTS IMPROVEMENTS ON ISSUES RELATING TO OUR MILITARY, POLITICO-MILITARY AND COMMERCIAL INTERESTS IN FREEDOM OF NAVIGATION AND OVERFLIGHT. IN THIS RESPECT, NEW PROVISIONS WERE NEGOTIATED AND INCORPORATED INTO THE ICNT REGARDING THE PROPOSED 200-MILE EXCLUSIVE ECONOMIC ZONE (EEZ) WHICH APPEAR TO SAFEGUARD TRADITIONAL HIGH SEAS FREEDOMS WITHIN THE EEZ EXCEPT FOR SPECIFIC RESOURCE-RELATED RIGHTS ACCORDED COASTAL STATES. SIMILARLY, WE WERE ABLE TO MAINTAIN BROADLY SUPPORTED ARTICLES ON TRANSIT THROUGH, OVER AND UNDER STRAITS OVER THE DIMINISHING OPPOSITION OF A SMALL NUMBER OF STATES. THE TEXT ON PROTECTION OF THE MARINE ENVIRONMENT IS LITTLE CHANGED FROM THE REVISED SINGLE NEGOTIATING TEXT (RSNT). IT CONTAINS SEVERAL POTENTIALLY HELPFUL PROVISIONS ON ALL SOURCES OF OCEAN POLLUTION AND A BALANCED SYSTEM FOR CONTROLLING VESSEL SOURCE POLLUTION. PROGRESS WAS ALSO MADE TOWARDS

THE ESTABLISHMENT OF A COMPREHENSIVE SYSTEM FOR THE
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PEACEFUL SETTLEMENT OF DISPUTES ARISING FROM OCEAN USES.
I DO NOT WANT TO LEAVE YOU WITH THE IMPRESSION, HOWEVER,
THAT ALL THE ISSUES JUST MENTIONED HAVE BEEN SETTLED TO
OUR COMPLETE SATISFACTION. WE WILL CONTINUE TO SEEK
IMPROVEMENTS AT ANY FUTURE NEGOTIATIONS.

THE RESULT ON MARINE SCIENTIFIC RESEARCH WAS MIXED. ON
THE ONE HAND, WE WERE ABLE TO NARROW THE SCOPE OF THE
LISTED CATEGORIES OF RESEARCH ACTIVITIES FOR WHICH
THE COASTAL STATE CAN DENY CONSENT AND TO RETAIN PROVISIONS
ON TACIT CONSENT. ON THE NEGATIVE SIDE, THE ICNT CONTAINS
A REGIME WHEREBY RESEARCH IN THE ECONOMIC ZONE IS GENERALLY
SUBJECT TO THE CONSENT OF THE COASTAL STATE. THE ICNT DOES
PROVIDE THAT COASTAL STATES SHALL GRANT THEIR APPROVAL OF
RESEARCH QTE IN NORMAL CIRCUMSTANCES. UNQTE THIS WAS INTEN-
DED TO COVER ALL SITUATIONS BUT THOSE INVOLVING SERIOUSLY
ABNORMAL POLITICAL RELATIONS. PROVISIONS FOR IMPARTIAL
DISPUTE SETTLEMENT WITH REGARD TO RESEARCH ARE POORLY
STATED.

I SHOULD NOTE THAT THE US AND A HANDFUL OF OTHER RESEARCH-
ING STATES WERE COMPLETELY ISOLATED ON MARINE SCIENTIFIC
RESEARCH. THE DEVELOPING COUNTRIES AND SOME DEVELOPED
COUNTRIES, PARTICULARLY THE USSR, FAVORED COMPLETE COASTAL
STATE DISCRETIONARY CONSENT AUTHORITY OVER ALL MARINE SCIENTIFIC
RESEARCH. WE MADE A MAJOR EFFORT TO IMPROVE THE TEXT,
AND I SINCERELY BELIEVE WE WERE SUCCESSFUL AT LEAST IN
WITHSTANDING MAJORITY PRESSURE FOR AN IMPOSSIBLY RESTRICTIVE
REGIME.

REVIEW

BECAUSE OF THE SERIOUS DEFECTS OF THE DEEP SEABEDS SECTION
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OF THE ICNT, I RECOMMENDED TO THE PRESIDENT THAT WE REVIEW
NOT ONLY THE BALANCE AMONG ALL OF OUR SUBSTANTIVE INTERESTS,
BUT ALSO WHETHER AN AGREEMENT WHICH ACCOMMODATES THE
DIFFERENT NATIONAL INTERESTS INVOLVED CAN BE ACHIEVED
THROUGH THE KIND OF NEGOTIATIONS WHICH HAVE THUS FAR TAKEN
PLACE.

THIS REVIEW HAS NOW BEGUN. WE EXPECT TO COMPLETE IT BEFORE
THE END OF THE YEAR. A KEY QUESTION WILL INVOLVE OUR POSTURE
TOWARDS THE NEXT SESSION OF THE CONFERENCE, WHICH IS
PROPOSED FOR GENEVA FROM MARCH 28 THROUGH MAY 19. IN DETERMINING
THIS POSTURE, WE WILL TAKE INTO ACCOUNT THREE

ESSENTIAL FACTORS:

(I) AN ASSESSMENT OF THE RELATIVE WEIGHT OF OUR SEVERAL INTERESTS IN A COMPREHENSIVE LAW OF THE SEA TREATY.

(II) AN ASSESSMENT OF THE LIKELIHOOD OF A TREATY TEXT EMERGING FROM THE CONFERENCE WHICH WOULD ACCOMMODATE THOSE INTERESTS. THIS ASSESSMENT WILL OBVIOUSLY TAKE INTO

ACCOUNT THE ATTITUDES OF OTHER COUNTRIES TOWARDS BOTH ACHIEVING A FAIR AND OPEN PROCESS AND MAKING THE ESSENTIAL COMPROMISES THAT ARE NECESSARY IF U.S. INTERESTS ARE TO BE ACCOMMODATED.

(III) AN ASSESSMENT OF THE ALTERNATIVES TO ANY COMPREHENSIVE TREATY WHICH IS LIKELY TO RESULT FROM THE LAW OF THE SEA CONFERENCE.

DEEP SEABED MINING LEGISLATION

LAST SPRING, PRIOR TO THE SIXTH SESSION, I TESTIFIED BEFORE A NUMBER OF CONGRESSIONAL COMMITTEES TO THE EFFECT THAT WE DID NOT SUPPORT LEGISLATION AT THAT TIME, BUT THAT WE WOULD REVIEW THIS POSITION IN LIGHT OF THE RESULTS OF UNCLASSIFIED

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THE SIXTH SESSION. WE BELIEVED THERE WAS A RISK AT THAT TIME THAT ADMINISTRATION SUPPORT FOR LEGISLATION COULD ADVERSELY AFFECT PROGRESS AT THAT SESSION. WE WERE PARTICULARLY CONCERNED THAT THE CHANCE TO OBTAIN THE GOOD WILL AND TONE OF THE INTERSESSIONAL MEETING HELD IN GENEVA IN FEBRUARY AND MARCH UNDER MINISTER EVENSEN'S CHAIRMANSHIP NOT IN ANY WAY BE JEOPARDIZED. WE ALSO FELT THAT THE SIXTH SESSION OFFERED REASONABLE PROSPECTS OF A BREAKTHROUGH ON DEEP SEABED ISSUES.

AS IT TURNED OUT, AND AS I HAVE
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